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7 UNITED STATES DISTRICT COURT
8 DISTRICT OF NEVADA

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10 UNITED STATES OF AMERICA,

Case No. 2:10-cr-00399-MMD-GWF

11 v. Plaintiff,

ORDER

12 PAUL WAGNER,

13 Defendant.

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15 This case is currently on appeal. Defendant Paul Wagner, proceeding pro se, has
16 filed several motions, including a motion for extension of time to file a motion for a new
17 trial and a motion for a new trial based on newly discovered evidence. (Dkt. no. 234,
18 235.)

19 Rule 33(b)(1) of the Federal Rules of Criminal Procedure establishes the time limit
20 for filing a motion for a new trial based on newly discovered evidence — three years
21 after the verdict or finding of guilt. Rule 33's time limit is not jurisdictional. *Eberhart v.*
22 *United States*, 546 U.S. 12, 19 (2005) (per curiam); see *United States v. Leung*, 796
23 F.3d 1032, 1034 (9th Cir 2015).

24 The jury returned a verdict of guilty on October 12 2012. (Dkt. no. 122.)
25 Defendant signed his motion for extension of time on October 10, 2015, which is within
26 the three year time limit under Rule 33(b)(1). (Dkt. no. 234.) Defendant has
27 demonstrated good cause to support his extension request. The Court will grant the
28 requested extension of time.

1 "If an appeal is pending, the court may not grant a motion for a new trial until the
2 appellate court remands the case." Fed. R. Crim. P. 33(b)(1). Because the Court cannot
3 address Defendant's motion for a new trial while his appeal is pending, the Court will
4 deny the motion without prejudice to Defendant to seek reinstatement.

5 It is therefore ordered that Defendant's motion for extension of time (dkt. no. 234)
6 is granted.

7 It is further ordered that Defendant's motion for a new trial, motion to conduct
8 discovery and motion for an evidentiary hearing (dkt. nos. 235, 236, 237) are denied
9 without prejudice to Defendant to file a request to reinstate these motions within thirty
10 (30) days after the Ninth Circuit Court of Appeals remands this case.

11 DATED THIS 21st day of October 2015.



12 MIRANDA M. DU
13 UNITED STATES DISTRICT JUDGE

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